

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA,

Plaintiff,

-against-

ORDER

CV 05-3178 (LDW)(ARL)

ABCON ASSOCIATES, INC., et al.,

Defendants.

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LINDSAY, Magistrate Judge:

Before the court is the defendant St. Vincents Catholic Medical Centers of New York's ("St. Vincents") letter application dated September 27, 2006, requesting that the court sanction the defendant Abcon Associates, Inc. ("Abcon") for failing to comply with this court's September 19th order directing Abcon to produce its privilege log. Specifically, St. Vincents requests that the court issue an order finding a privilege waiver and compel the production of all documents previously withheld on the basis of privilege. The defendant Abcon opposes the application by letter of the same date. Abcon has apologized for the delay and advised the court that it inadvertently deleted the email attaching the court's September 19th order. Abcon further advises that it will not be withholding any documents on the basis of privilege and that all responsive documents have now been turned over to St. Vincents' counsel.

By letter dated September 28, 2006, St. Vincents argues that the representations contained in Abcon's opposition letter are contrary to its previous representation that privileged documents were, in fact, being withheld.¹ Counsel for Abcon responds that his client was initially under the impression that certain communications between Abcon and his law firm should be withheld,

¹In the future, the undersigned will not consider reply and sur-reply letters submitted by counsel without leave of court.

which resulted in his claim of privilege. Counsel now states that upon further review, he has determined that all documents, including “privileged documents,” have been provided to St. Vincents. While the court is cognizant of the fact that St. Vincents has been forced to make numerous application to the court in pursuit of these documents and does not countenance Abcon’s behavior, the issue before the court does appear to be moot. Accordingly, the application for sanctions is denied.

Dated: Central Islip, New York
October 3, 2006

SO ORDERED: